

DAVID J. EVERS - April 29, 2005

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 PAUL PAPADAKIS,
4 Plaintiff

5 v.

Civil Action No.
04-30189-MAP

6 CSX TRANSPORTATION, INC.,
7 Defendant

8 DEPOSITION OF DAVID J. EVERS TAKEN ON
9 BEHALF OF THE PLAINTIFF AT THE ANDERSON GROUP, 125
10 WOLF ROAD, ALBANY, NEW YORK, ON FRIDAY, APRIL 29,
11 2005 AT 10:00 A.M.

12
13 APPEARANCES:
14 (See Page 2)

COPY

15
16 Reported By: Brenda L. Bigelow
17 Associated Reporters International, Inc.
234 Hudson Avenue
18 Albany, New York 12210
Tel: (800) 523-7887
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1 Q. Was it manual or automatic?

2 A. Manual.

3 Q. Describe for me the informal
4 instruction you recall receiving on the operation
5 of Fairmount high rail gear.

6 A. I don't recall the specifics, other
7 than it was to instruct the proper way of lowering
8 the wheels and putting the wheels back up.

9 Q. Do you believe you know the proper
10 way of lowering and raising Fairmount high rail
11 wheels?

12 A. Yes.

13 Q. Describe for me the method of
14 lowering Fairmount high rail wheels as you
15 understand it.

16 A. First of all, you use the proper
17 current bar for the model of the year that you're
18 using, and you pull the pin out of the locking
19 mechanism, of the two locking mechanisms on the
20 gear.

21 You insert the proper end of the bar
22 in the portion, or the socket required for lowering
23 the gear properly. And you leverage the bar down
24 to release the lock, and push the lock release
25 lever forward. And in a controlling manner, you

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1 Q. Exhibit 4 was faxed to you?

2 A. That's correct.

3 Q. By Ms. Mahacek?

4 A. That's correct.

5 Q. When did you last see Exhibit 4
6 prior to seeing it I believe you said on Wednesday
7 of this week?

8 A. I can't recall.

9 MR. BYRNE: Mike, would you have an
10 extra copy of that?

11 MR. FLYNN: Yes.

12 MR. BYRNE: Thank you.

13 BY MR. BYRNE:

14 Q. Do you know who drafted Exhibit 4?

15 A. I don't recall.

16 Q. Does your name appear on it?

17 A. Yes, it does.

18 Q. In fact, your name appears right
19 across the top. It says message from DJ Evers.

20 A. That's correct.

21 Q. You're the DJ Evers referred to in
22 the document?

23 A. That's correct.

24 Q. But you don't -- did you draft
25 Exhibit 4?

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1 A. I don't remember drafting the
2 message, no.

3 Q. Did you dictate it?

4 A. No.

5 Q. Can you explain why your name
6 appears on it?

7 A. Yes. Every Friday as Division Engi-
8 neer and Chief Regional Engineer a safety bulletin
9 was issued from my office. And one of the items
10 within the bulletin or the newsletter would be a
11 message from me.

12 Q. And is this Exhibit 4 one of those
13 messages or bulletins from you?

14 A. That's correct.

15 Q. With what frequency would you issue
16 bulletins or messages of this type?

17 A. As I stated earlier, every Friday
18 some message would be included in the safety
19 newsletter.

20 Q. So was Exhibit 4 included in the
21 newsletter that was issued on a Friday during 2001?

22 A. As far as I recall, yes.

23 Q. Was there someone working subordi-
24 nate to you in that time frame that was responsible
25 for preparing these bulletins or newsletters?

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1 safety -- the newsletters or bulletins would
2 ultimately find their way into the hands of, or at
3 least be read to, or read by the members of the
4 Engineering Department who would be working in the
5 field?

6 A. Yes.

7 Q. And that would include I&R inspec-
8 tors?

9 A. Yes.

10 Q. Trackmen?

11 A. Yes.

12 Q. Foremen?

13 A. Yes.

14 Q. Assistant foremen?

15 A. Yes.

16 Q. Supervisors?

17 A. Yes.

18 Q. Is there anybody who was not expected
19 to become familiar with the bulletins that you
20 would issue in the Engineering Department?

21 A. It was expected that everyone would
22 be aware of and have knowledge of the content.

23 Q. Would you -- would copies of the
24 weekly safety bulletins be kept by you or somewhere
25 in the Division Engineer's office?

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1 that may have occurred over the years with other
2 people.

3 Q. You used the word "may" in your
4 response. Is it your testimony that you did have
5 conversations of that type?

6 A. I may have.

7 Q. Well then I'll ask the same ques-
8 tion. What is the basis for your understanding
9 that high rail gear can operate in the manner
10 described in paragraph 1?

11 A. I became -- over the years of
12 experience I became aware that that could happen.
13 How exactly I found out, I don't recall.

14 Q. And when did you become aware that
15 high rail equipment could act in the manner
16 described in paragraph 1 of Exhibit 4?

17 A. I don't recall.

18 Q. Was it before June of 2001?

19 A. I don't remember.

20 Q. To your knowledge, had CSX ever
21 provided -- or rather, ever informed those
22 operating its high rail gear prior to June 13th of
23 2001 to be alert, not to allow the rail gear to
24 rotate past the normal position in the manner
25 described in paragraph 1 of Exhibit 4?

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1 truck what, if anything, do you recall doing as
2 Chief Regional Engineer?

3 A. Will you repeat that, please.

4 *(The last question was read)

5 A. One more time.

6 *(The last question was read)

7 A. I don't recall how the information
8 was relayed when it was relayed, but I do know that
9 the -- as a result of the injury and the investi-
10 gation of the injury that the particular message in
11 Exhibit 4 that you presented to me was compiled and
12 developed and sent out as part of a safety bulletin
13 to the people on the region from my staff. Exactly
14 who compiled it and put it out, I don't recall.

15 BY MR. BYRNE:

16 Q. Is that the extent of what you knew
17 -- rather recall, being done in light of the
18 information that was generated during the course of
19 the investigation into this incident? That is,
20 that this weekly safety bulletin letter was
21 distributed to the members of the Engineering
22 Department?

23 A. That and the inspection, the field
24 inspection being done.

25 Q. And do you know if that field

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1 inspection was done at TNT?

2 A. No. Actually what I remember of it
3 was that the supervisors and the I&R foremen
4 examined all the trucks at the different isolated
5 locations throughout the division and checked them
6 out for the proper bars, and also if they had any
7 improper bars.

8 Q. Okay. You recall that being done?

9 A. Yes.

10 *Q. Is that, the fact that the super-
11 visory personnel were to verify that the correct
12 bars were on the trucks, documented somewhere in
13 Exhibit 4?

14 A. I don't recall.

15 Q. Well it's right in front of you.

16 A. Would you repeat the question,
17 please.

18 *(The last question was read)

19 A. I misunderstood your question. I
20 thought you were asking if the inspection was
1 documented. Yes, Exhibit 4 states that the im-
2 proper hand bars are to be turned into supervisors
3 for proper disposal.

4 BY MR. BYRNE:

5 Q. But it doesn't say that the super-